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Administration of justice at the United Nations

Letter dated 10 October 2012 from the Secretary-General to the President of the General Assembly

I have the honour to transmit a letter dated 4 October 2012 that I received from Judge Vinod Boolell, President of the United Nations Dispute Tribunal (see annex), forwarding two enclosures that convey the observations of the judges of the Dispute Tribunal on the recommendations contained in the report of the Internal Justice Council (A/67/98) and my report on the administration of justice at the United Nations (A/67/265 and Corr.1) under item 141 of the agenda of the General Assembly, entitled "Administration of justice at the United Nations".

Judge Boolell requests that the letter and its enclosures be circulated as a document of the General Assembly.

(*Signed*) **BAN** Ki-moon

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Annex

Letter dated 4 October 2012 from the President of the United Nations Dispute Tribunal to the Secretary-General

I have the honour to write to you on behalf of the judges of the United Nations Dispute Tribunal to convey our concern in regard to some observations and recommendations contained in the report of the Secretary-General (A/67/265) and the report of the Internal Justice Council (A/67/98) under item 141 of the agenda of the General Assembly, entitled "Administration of justice at the United Nations". I am attaching two documents that set out briefly the observations of the judges of the Dispute Tribunal on the above-mentioned reports (see enclosures I and II).

I should be grateful if the present letter and its enclosures could be communicated to the President of the General Assembly for their transmittal to, and consideration by, the Sixth Committee, and for their circulation as a document under agenda item 141.

(*Signed*) Vinod **Boolell**
President
United Nations Dispute Tribunal

Enclosure I

Administration of justice at the United Nations

Observations by the judges of the United Nations Dispute Tribunal on recommendations contained in the report of the Internal Justice Council

1. After careful thought and deliberation, the judges of the United Nations Dispute Tribunal have come to the conclusion that it is their duty to the General Assembly, as independent judges, to present their views on some of the issues contained in the report of the Internal Justice Council (A/67/98) under item 141 of the agenda, in relation to the work of the Dispute Tribunal.

2. The judges are especially concerned about the observations made on the complaints mechanism for judges and the reference to a case of alleged impropriety by a sitting judge.

Complaints mechanism

3. At paragraph 14 of the report, the Internal Justice Council recommends that complaints against judges should be determined by the three external jurists on the Council.

4. The judges recall that in a letter dated 7 October 2011 (A/66/507) addressed to the President of the General Assembly by Judge Memooda Ebrahim-Carstens, in her capacity as President of the Dispute Tribunal, they expressed the view that such complaints should be reviewed by a panel consisting of the President and two judges of the Dispute Tribunal. The judges explained that the composition of the Internal Justice Council, which includes staff and management representatives, disqualifies it for this task. Furthermore, the body responsible for selecting and recommending candidates to the General Assembly for appointment as judges should not play a key role in the complaints procedure.

5. The judges note with concern that the Internal Justice Council has nevertheless returned with the same recommendation. The judges maintain that such complaints must be dealt with by the judges themselves. The concern that the Council refers to regarding a perception of impartiality on the part of judges in dealing with a complaint against one of their peers is misplaced. It is a practice that exists in many national and international jurisdictions, including the International Criminal Court, the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Court of Justice and a number of international or regional administrative tribunals.

6. The judges note with great concern and disappointment that the Internal Justice Council refers, at paragraph 12, to a complaint of alleged impropriety by a sitting judge in order to explain the need for a complaints mechanism. The complaint cited by the Council was never properly investigated by it, nor was the judge in question given an opportunity to respond to the allegations. The substance of the example provided by the Council, in the absence of authority for the Council to be seized of such a complaint, and given that the complaint in question was exhaustively dealt with by the President of the Dispute Tribunal, reflects an

unjustified and blatant breach of the rules of natural justice. The judges take strong exception to paragraph 12 of the report.

Half-time and ad litem judges

7. At paragraph 24 of the report, the Internal Justice Council recommends that the need for an additional half-time judge might be avoided if the half-time judges were remunerated at 75 per cent of the cost of a full-time judge, which would enable the half-time judges to devote more than six months per year to the Dispute Tribunal.

8. The judges take the view that extreme prudence should be exercised in this regard. The judges have advocated for an additional full-time judge at each duty station of the Dispute Tribunal, and that point is mentioned at paragraph 22 of the report. Allocating more resources for the half-time judges might, in the long run, compromise the appointment of an additional full-time judge at each duty station.

9. At paragraph 21 of the report, the Internal Justice Council maintains its view that it is not desirable to extend the terms of ad litem judges continually. In the present uncertain climate, the alternative to the establishment of an additional full-time judge at each duty station would be to extend the terms of the ad litem judges by at least two years, leaving the half-time judges' conditions of service unchanged.

Judicial symposium on the work of the Tribunals

10. At paragraph 43 of the report, the Internal Justice Council writes:

> The Internal Justice Council, and particularly its Chair, worked with Brandeis University in the United States of America (which has a well-established programme for training international judges) and Osgoode Hall Law School in Canada (which has a fine reputation for legal training) to organize a symposium with the United Nations judges about the performance of the internal justice system. To the Council's great disappointment, the project had to be shelved.

11. While they fully agree that the symposium was a missed opportunity, the judges would welcome participation in such a symposium in the future. The judges propose that the matter be discussed at the earliest opportunity between the Chair of the Internal Justice Council and the President of the Dispute Tribunal to maximize the usefulness of the symposium for the judges of the Dispute Tribunal.

Code of conduct for lawyers or representatives of litigants

12. The judges note that the Internal Justice Council is proposing, at paragraph 44, a code of conduct that will regulate the conduct of external lawyers and representatives who appear before the Dispute Tribunal. The proposed code does not seek to regulate the conduct of counsel appearing for the Secretary-General who are staff of the United Nations, and it is based on the premise that staff members appearing before the Tribunal will be regulated by the existing Staff Regulations and Rules.

13. The judges are of the view that the proposed code would be wholly inadequate and inappropriate. A staff member who represents the Secretary-General or applicant should be regulated by the same code of conduct as external counsel.

There should not be two categories of lawyers or representatives appearing before the Dispute Tribunal.

14. There is nothing in the Staff Regulations and Rules that empowers the Dispute Tribunal to take or recommend any action against a staff member appearing as counsel for the Secretary-General or applicant before the Dispute Tribunal except for the referral on accountability. In the case of lawyers or representatives who are staff members of the United Nations, the Dispute Tribunal will be unable to enforce discipline and ethical behaviour if those staff members are placed outside the ambit of a code of conduct. A code of conduct imposing ethical behaviour before a court of law is not to be assimilated to regulations and rules governing the terms of service of staff members. A judge must be in a position within the framework of a code of conduct to take appropriate action promptly in the case of unethical behaviour on the part of counsel without having to go through the lengthy accountability process.

15. Experience has shown that it is very difficult, if not impossible, to achieve any positive action in regard to staff members under article 10.8 of the statute of the Dispute Tribunal regarding accountability. In the case of lawyers or representatives who are staff members, the Dispute Tribunal will be unable to enforce discipline and ethical behaviour if those staff members are placed outside the ambit of a code of conduct.

Enclosure II

Administration of justice at the United Nations

Observations by the judges of the United Nations Dispute Tribunal on recommendations contained in the report of the Secretary-General

Mechanisms for addressing possible misconduct of judges

1. The Secretary-General makes his recommendation in annex VII, section B, paragraphs 2 and 3, of his report (A/67/265 and Corr.1).

2. At paragraph 2, the Secretary-General writes:

> In his reports contained in documents A/63/314 and A/66/275 and Corr.1, the Secretary-General proposed that allegations regarding the misconduct or incapacity of a judge of either the Dispute Tribunal or the Appeals Tribunal should be reported to the President of the relevant Tribunal. Upon receipt of such a complaint, after preliminary review, the President would establish a panel of experts to investigate the allegations and report its conclusions and recommendations to the Tribunal. All judges of the Tribunal, with the exception of the judge under investigation, would review the report of the panel. Should there be a unanimous opinion that the complaint of misconduct or incapacity was well-founded and where the matter was of sufficient severity to suggest that the removal of the judge would be warranted, they would so advise the President of the Tribunal, who would report the matter to the General Assembly and request the removal of the judge. In cases where the complaint of misconduct or incapacity was determined to be well-founded but was not sufficient to warrant the judge's removal, the President would be authorized to take corrective action, as appropriate. Such corrective action could include issuing a reprimand or a warning. The President would submit a report to the General Assembly on the disposition of complaints. The types of misconduct that would warrant the sanctioning of a judge would be violations of the code of conduct for the judges or violations of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, as set out in Secretary-General's bulletin ST/SGB/2002/9.

3. At paragraph 3 of the same section, the Secretary-General justifies his recommendation:

> The proposal of the Secretary-General is in line with the practice of a number of international organizations. The African Development Bank, the Asian Development Bank, the International Monetary Fund and the former United Nations Administrative Tribunal all stipulate in their statutes that a determination to remove a judge requires the agreement of all the other judges of the tribunal. Similarly, a concurrence of a majority of the judges is required to remove a judge under the statutes of the International Criminal Court and the European Union Civil Service Tribunal. In addition, the proposal that the court reviewing a complaint against a judge may issue corrective action, such as a reprimand or warning, is recognized in the judicial systems of a number of Member States.

4. The judges fully endorse and support that recommendation as it has the merit of affording the judges the responsibility to deal with cases of misconduct or incapacity of judges. The judges would wish to emphasize, however, that they should be consulted when the details of the complaint mechanism are worked out.

Code of conduct for lawyers or representatives of litigants

5. The judges note that the Secretary-General, in annex VIII of the report, is proposing that there should be a code of conduct for legal representatives who are not staff members. The report justifies that recommendation on the grounds that the staff members who appear before the Dispute Tribunal are already subject to a regulatory framework as international civil servants. The Secretary-General refers to the existing rule that empowers the Dispute Tribunal to refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

6. The judges are of the view that the proposed code would be both inadequate and inappropriate. The behaviour of a staff member who represents the Secretary-General or an applicant should be regulated by the same code of conduct. There should not be two categories of lawyers or representatives appearing before the United Nations Dispute Tribunal. In many jurisdictions, counsel who are employed by the State are governed by rules pertaining to the public service and also by the code of conduct applicable to all lawyers.

7. There is nothing in the Staff Regulations and Rules that empowers the Dispute Tribunal to take or recommend any action against a staff member appearing as counsel for the Secretary-General before the Dispute Tribunal except for the referral on accountability. A code of conduct imposing ethical behaviour before a court of law is not to be assimilated to regulations and rules governing the terms of service of staff members. A judge must be in a position within the framework of a code of conduct to take appropriate action promptly in the case of unethical behaviour on the part of counsel without having to go through the lengthy accountability process.

8. Experience has shown that it is very difficult, if not impossible, to achieve any positive action in regard to staff members under article 10.8 of the Statute of the Dispute Tribunal regarding accountability. In the case of the lawyers or representatives who are staff members, the Dispute Tribunal will be unable to enforce discipline and ethical behaviour if those staff members are placed outside the ambit of a code of conduct.